

This letter concerns whether various mastectomy related products qualify for the reduced rate of tax provided to medical appliances. See 86 Ill. Adm. Code 130.310. (This is a PLR.)

May 13, 2005

Dear Xxxxx:

This letter is in response to your letter dated September 18, 2003 in which you request information. We apologize for the delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC, for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither ABC nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

This private letter ruling request is submitted on behalf of ABC, an Illinois not-for-profit corporation. In furtherance of its charitable purposes, ABC owns and operates XYZ, a boutique which sells products designed to assist women who have had mastectomies. The purpose of this private letter ruling request is to determine whether such products that are specifically delineated in this letter are taxable at the exempt rate of 1% applicable to medical appliances under the Illinois Retailers' Occupation Tax (the 'sales tax').<sup>1</sup>

The regulations issued by the Illinois Department of Revenue (the 'Department') define 'medical appliance' for purposes of the sales tax as '...an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body.'<sup>2</sup> Corrective medical appliances qualify for the lower rate of tax.<sup>3</sup> However, the regulations state that supplies (*i.e.*, non-sterile cotton swabs, cosmetics, hair tonics) do not qualify for the exemption and are thus taxable at the higher rate of tax. The

regulations continue to specifically state that ‘...prescription and non-prescription medicines, drugs, [and] medical appliances...are subject to the 1% rate of tax.’<sup>4</sup>

In light of the regulations presented above, we seek confirmation of our belief concerning the appropriate tax rates for the following items:

1. Head Coverings [including (a) hats, (b) head scarves, (c) turbans, and (d) baseball caps]. We believe these items to be taxable at the exempt rate of tax since such head coverings function as replacements for the loss of a human body part (*i.e.*, hair). The head coverings act as a replacement for the patient's loss of hair due to chemotherapy.

2. Hair Pieces [including (a) hoops of hair and (b) attachable bangs]. We believe that such items are taxable at the lower rate of tax since they function in place of a malfunctioning human body part (*i.e.*, hair) due to the loss of such hair during chemotherapy.<sup>5</sup>

3. Mastectomy bras [including (a) leisure bras, (b) soft cup bras, (c) underwire bras, and (d) post-mastectomy camisoles]. We believe such products to be taxable at the lower rate of tax since mastectomy patients who desire to wear a prosthesis would otherwise be unable to comfortably wear the prosthesis without a bra that has been specially tailored to allow for the insertion of a prosthesis. Thus, the mastectomy bras allow for the insertion of a prosthesis and are integral to its use. Because the prosthesis functions in place of a human body part (*i.e.*, the breast), we believe that such bras are subject to the lower rate of sales tax.

4. Breast prostheses [including (a) full forms, (b) partial forms, (c) swim forms, (d) leisure forms, and (e) breast enhancers]. We believe that these products are taxable at the lower rate of tax because they function in place of a malfunctioning body part (*i.e.*, malignant breast tissue). Accordingly, it is our belief that breast prostheses represent medical appliances which qualify for the exempt rate of tax.

5. Skin Care Products

a. *Deodorant for radiation patients.* We believe that such a product qualifies for the exempt rate of tax since the product is a non-prescription medicine.<sup>6</sup> Because regular deodorant products often contain metals (*i.e.*, aluminum), radiation patients are not able to use such products. Accordingly, because this product is used in conjunction with a radiation patient's treatment, it should be considered a non-prescription medicine and thus qualify for the lower rate of sales tax.

b. *Creams and lotions for radiation patients.* We believe that such products qualify for the lower exempt rate of tax as non-prescription medicines. Due to the sensitivity of the skin of radiation patients, such patients are required to use special creams and lotions. Because the use of such lotions and creams is related to the treatment of radiation patients, such products should be subject to the lower rate of tax.

\*[The letter ruling request did not contain a question number 6.]

7. Supplies

a. *Covers for prostheses.* We believe that such products qualify for the lower tax rate since, but for the loss of the human breast, there would be no need for a prosthesis. Since the prosthesis covers are related to, and are an integral part of, the proper use and function of the prosthesis (which is required due to the loss of breast tissue, a human body part), such prosthesis covers qualify for the lower rate of sales tax.<sup>7</sup>

b. *Garment pockets for prosthesis.* A garment pocket is a precut piece of fabric that can be sewn into a swimsuit or other clothing and is designed to hold a breast prosthesis. We believe that such a product is subject to the lower rate of sales tax since such a product is designed to hold a breast prosthesis, which functions as a substitute for a malfunctioning part of the human body (*i.e.*, the breast). The garment pocket is related to, and is an integral part of, the use of the prosthesis. But for the loss of the breast, there would be no use for the garment pocket.

c. *Comfy straps.* The purpose of this product is to keep a bra from slipping and to prevent shoulder indentation. Such products are required by mastectomy patients because of the weight of the prosthesis. The prosthesis carries additional weight, which may cause irritation to the shoulder. Because the comfy straps are necessitated by the use of the prosthesis and are related to the use of the prosthesis, and the prosthesis is substituting for a malfunctioning part of the human body (*i.e.*, the breast), such products should qualify for the lower rate of sales tax.

d. *Filler pads.* This product functions as a filler for spaces in which a substantial amount of tissue has been removed. Because the filler pad is substituting for tissue (a part of the human body which is malfunctioning due to removal), we believe the filler pad is a medical appliance which is subject to the lower rate of tax.<sup>8</sup>

e. *Bra Extenders.* We believe that this product is taxable at the lower rate of sales tax. The purpose of the bra extender is to extend the width of a regular bra when extra band width is required. Extra band width would not be required, but for the insertion of the prosthesis. Because the prosthesis functions in place of a malfunctioning human body part (*i.e.*, the breast), and the bra extended is related to the use of the prosthesis, the bra extenders should be subject to the lower rate of sales tax.

f. *Camisole Inserts.* We believe that this product is taxable at the lower rate of sales tax. Its purpose is to provide additional coverage to the chest area. Because the product is used by mastectomy patients and would not be required, but for the loss of the breast, such a product should qualify for the lower rate of sales tax.

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To the best knowledge of ABC and FIRM, the Department has not previously ruled on the same or a similar issue for ABC. ABC has never submitted a private letter ruling request on the same or a similar issue. Thus, we would appreciate your guidance on this issue. This matter is not under audit or being litigated. We are unaware of any authority to the contrary of our perceived determinations presented above. The current tax period is at issue. If you have any questions or need additional information in order to provide the ruling requested, please do not hesitate to contact me.

Thank you in advance for your assistance with this matter.

## DEPARTMENT'S RESPONSE:

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are not taxed at the normal State rate of 6.25%. These items are taxed at a lower State rate of 1%. See 86 Ill. Adm. Code 130.310. A medical appliance is defined as an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See part (c) of Section 130.310.

**Head Coverings** – The hats, head scarves, turbans, and baseball caps referenced in your letter do not directly substitute for a malfunctioning part of the body. These items are used for cosmetic purposes and do not qualify for the lower 1% State rate of tax provided for medical appliances.

**Hairpieces** – In general, wigs or hairpieces that are used for cosmetic purposes by persons who have naturally occurring hair loss do not qualify for the low rate of tax. However, hairpieces, including hoops of hair and attachable bangs, that are used by persons who have lost their hair due to chemotherapy will qualify for the lower 1% State rate of tax provided for medical appliances.

**Mastectomy Bras & Breast Prostheses** – Breast prostheses used by mastectomy patients are intended to directly substitute for a malfunctioning part of the body and qualify for the lower 1% State rate of tax provided for medical appliances. Mastectomy bras which are specially designed to be used in conjunction with breast prostheses will also qualify for the lower 1% State rate of tax provided for medical appliances.

**Skin Care Products** – Deodorants and creams for radiation patients do not qualify as medical appliances. However, it may be possible that the deodorants and creams could qualify as a medicine or a drug. The Department's administrative rules provide that a medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." See part (c)(1) of Section 130.310. If the deodorants or creams have medicinal claims on their labels, then they may qualify for the lower 1% State rate of tax provided for medicines and drugs.

**Supplies** – Covers for prostheses will qualify for the lower 1% State rate of tax as medical appliances only if they are required for the proper use of breast prostheses. The "garment pockets," "comfy straps," "bra extenders," "filler pads," and "camisole inserts" described in your letter will also qualify for the lower 1% State rate of tax as medical appliances if they are used in conjunction with breast prostheses.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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TDC:msk

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<sup>1</sup> 86 Ill. Adm. Code 130.310 (2001).

<sup>2</sup> 86 Ill. Adm. Code 130.310(e) (2001).

<sup>3</sup> *Id.*

<sup>4</sup> 86 Ill. Adm. Code 140.126(c)(3) (2001)

<sup>5</sup> 86 Ill. Adm. Code 130.310(c)(2)(2001).

<sup>6</sup> 86 Ill. Adm. Code 140.126 (2001).

<sup>7</sup> *Id.*

<sup>8</sup> 86 Ill. Adm. Code 130.310(c)(2) (2001).